**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 1959 OF 2003**

M/s Standard Batteries Limited .....]
Vakola, Santacruz (East), ] Petitioners
Mumbai - 400 055 ]

Versus

1) Presiding Officer, ]
III Labour Court, ]
New Administrative Bldg. 6th Floor, ]
Bandra (E), Mumbai - 400 051 ]
]
2) S.R. Shetty ]
Shinde Chawl No. 1, Room No. 7, ]
Tambapada, Gamdevi Road, ]
Bhandup, Mumbai - 400 078 ]
]
3) Chandrakant M. Mangaonkar, ] Respondents
B-10, Chandrabhaga Apt., ]
Nagwekar Marg, ]
Old Prabhadevi, Mumbai- 400 025 ]
]
4) P.M. Mangaonkar ]
Siddhi Sai, Plot No. 1096, ]
Maran Ghag Marg, ]
New Prabhadevi, ]
Bombay - 400 025 ]
]
5) Anant K. Tamore, ]
A/2, Sagar Griha Nirman ]
Shekar Society, Pandit Wadi, ]
Bazar Wadi, Virar (E), ]
Thane. ]

Mr. R.V. Paranjpe, Advocate for the Petitioners

Mr. R.D. Bhat, Advocate for the Respondent nos. 3 to 5.

**CORAM : ABHAY S. OKA.**

DATE : 30TH JUNE, 2006

**JUDGMENT**

1. On the last date, I have heard submissions of learned counsel appearing for the parties. Today the petition is kept for dictation of the Judgment. By this petition under Article 226 of the Constitution of India, the petitioner has taken exception to the Award dated 26th May, 2003 passed by learned Presiding Officer of III Labour Court at Mumbai in Reference (IDA) No. 586 of 1993 to 589 of 1993.

2. With a view to appreciate the submissions made by learned counsel appearing for the parties, it will be necessary to briefly refer to the facts of the case. The reference has been made at the instance of the Respondent Nos. 2 to 5 who were employees of the Petitioner-Company. According to the case of the Petitioner, the Respondent Nos. 2 to 5 indulged in serious acts of misconduct by opposing the shifting of the operations of the petitioner-Company from Vakola, Santacruz to Taloja, District Raigad. According to the Petitioner, after conducting domestic enquiries, the said Respondents were dismissed from the employment of the Petitioner. The Deputy Commissioner of Labour, Mumbai made references to the Labour Court for reinstatement of the said Respondents with full back wages and continuity of service with effect from 8th August, 1992.

3. It appears that after the issue regarding the fairness of enquiry and perversity of findings was decided by learned Judge of the Labour Court, there was a settlement between petitioner and some workmen under Section 2(p) r/w 18(1) of the Industrial Disputes Act, 1947 (hereinafter referrred as "the said Act of 1947"). The settlement was arrived at on 23rd October, 2000. An application was made on 12th April, 2002 by the petitioner in the pending references for the purpose of placing the settlement on record and for praying that the references be disposed off in accordance with the settlement. The Respondent Nos. 2 to 5 filed a reply stating that the Petitioner insisted that before payment of 2nd instalment of 1/3rd amount, the workmen should withdraw pending references/ complaints. They contended that as they were not taken into confidence by the Company, the said respondents were not interested in settling the matter. The learned Presiding Officer of the Third Labour Court directed the petitioner-Company to pay to the respondent Nos. 2 to 5 the amount which is due and payable as per settlement dated 23rd October, 2000 with the interest thereon at the rate of 9% per annum from 30th March, 2002 till the payment of the said amount. The Petitioner was directed to pay the said amount to the workmen on or before 31st July, 2003, failing which it was directed that the petitioner will be liable to pay

interest at the rate of 15% per annum till its final realisation.

4. On 1st December, 2003 rule was issued in this petition and an interim relief in terms of prayer clause (b) was granted. Earlier on 3rd November, 2003, the petitioner was directed to deposit in this Court the balance 1/3rd amount payable to the 2nd to 5th Respondent in accordance with the settlement. While granting interim relief in terms of Clause (b), this Court permitted the 2nd to 5th respondent to withdraw the amounts payable to them as per the settlement.

5. The learned Counsel appearing for the petitioner submitted that under the terms of the settlement, there was no clause under which the workmen were entitled to claim interest. He submitted that in fact the petitioner- Company was always willing to abide by the settlement, but the record of Labour Court shows that the 2nd to 5th Respondent opposed the disposal of the references in terms of the settlement. He submitted that in the circumstances, the Labour Court could not have directed the petitioner to pay interest. He submitted that in any case rate of interest awarded by the Labour Court is exorbitant. The learned Counsel appearing for the Respondents 2 to 4 submitted that the learned Presiding Officer of the Labour Court was well within the jurisdiction to grant interest. He has placed reliance on the certain

decisions of the Apex Court. He invited my attention to the relevant clauses in the terms of settlement and he submitted that the settlement was to be recorded before the Labour Court only after the first instalment as provided in the settlement was paid to the concerned workmen. He submitted that the petitioner was never desirous of implementing the terms of the settlement and therefore to compensate the concerned respondents for the delay on the part of the Petitioner in implementation of the settlement, order for payment of interest has been passed.

6. I have considered the submissions. It will be necessary to refer the terms of the settlement. There is no dispute before me about the fact that the settlement in question was applicable to the Respondents 2 to 5. The settlement provides that the workmen whose names are mentioned in "Annexure I" to the settlement will be paid upto the period of 31st May, 1996 as per the Wage rate prevailing on that date compensation in terms of Section 89 of Income Tax Act,1961 equivalent to 45 days wages for each completed year of service or 50% of wages for the remaining years of service whichever is lower. In addition to that the petitioner was to pay 40% (50% of 80%) of back wages upto May 1996 plus Employer’s contribution to Provident Fund as well as 50% of the leave wages and other dues. The Petitioner agreed to pay gratuity as on the date of dismissal. The amount payable to the workmen was to be

paid in two instalments. The first instalment was to cover 2/3rd of the total amount payable to the workmen eligible under the settlement subject to statutory deductions. The amounts were to be paid within 10 days of the date of signing of the settlement provided the Memorandum of settlement was signed by atleast 75% of eligible workmen in list 1 and 2 attached to the settlement. The balance 1/3rd of the total amount payable was to be paid within 45 days of the disbursal of first instalment provided the parties shall record the settlement in the pending cases. Clause 4 stipulates that the petitioner agreed to pay the amounts to the workmen without any default. In Paragraph No. 5, it was provided that in case Exide Industries Limited agreed to release additional amount, the workmen will receive certain additional payments. Paragraph No. 8 of the settlement reads thus :

> "8. In consideration of the above terms, the subject matter of cases pending before various Courts/Authorities and listed in Annexure 4 stand settled and the parties will file joint pursis before Court Authority for disposal of the same and obtain orders from the concerned Court in terms of the same".

7. On 8th March, 2002, an application was made on behalf of respondent nos. 2 to 5 before the Labour Court stating that though there were negotiations

between the parties, no amicable settlement could take place and in view of the said fact the workmen were desirous of proceeding with the matters. It is pertinent to note that this application was filed nearly 1 and 1/2 year after the date of settlement. On 16th March, 2002 the Advocate for the petitioner filed pursis stating that the dispute has been settled between the parties, but the concerned workmen have not brought full facts to the notice of the Court. On 12th April 2002, applications were made by the petitioner in the pending references inviting the attention of Labour Court to the settlement dated 23rd October, 2000 which was arrived at the intervention of the then Minister of Labour, Government of Maharashtra. It was contended in the application that the petitioner had acted upon the settlement by making payment of first instalment of 2/3rd amount to the eligible workmen. It was, therefore, prayed that the settlement be taken on record and matter be disposed-of.

8. The respondent Nos. 2 to 5 filed the reply to the said application. In the said reply, the history of the dispute was narrated. In Paragraph no. 4 of the reply, it was stated thus :

> "In terms of the said settlement, 1st instalment of 2/3 was paid to eligible workmen. Subsequently, the company insisted that before payment of the balance 1/3rd amount the

employees should withdraw the pending references/ complaints of unfair labour practices. The workmen showed their willingness to do so provided they were paid the remaining 1/3rd amount but the company insisted that workmen should first withdraw, only then the balance amount of 1/3rd will be paid".

9. The learned Presiding Officer of the Labour Court referred to Paragraph No. 5 of the settlement, the relevant portion of which are thus :

5. "As stated hereinabove, EXIDE is unwilling to pay beyond Rs.18 Crores although the Company is trying to persuade EXIDE to accept further balance liability of Rs.10 Crores. The Company expects that this matter will be settled at an early date. The Company agrees that for the first additional Rs.1 Crore if received from EXIDE (i.e. in addition to Rs.18 Crores), the Workmen will be paid additional compensation of 5 days' of wages for every completed year of service of 5% of wages for remaining period of service whichever is lower and applicable (prorata basis for fraction of a crore). Similarly, 5% additional amount of other dues and backwages, where applicable, will be paid along with appropriate Provident Fund contribution. Any amount if received by the

Company in excess of Rs.19 Crores will be paid to the workmen subject to a maximum of 90 days compensation as per the "Minutes". The total amount of days or percentage for which the amount will become payable shall not exceed the maximum number of days or percentage agreed as per said "Minutes". The Company agrees to inform Workmen's representatives who are signatories to this settlement about payments received from EXIDE within 15 days of its receipt".

10. The learned Presiding Officer noted that as per Clause No. 5 of the settlement, the Petitioner-Company received sum of Rs.3.76 Crores from the EXIDE Industries Limited after signing of the settlement. The learned Presiding Officer held that while making an application praying for disposal of the references in view of the settlement, the Petitioner- Company did not deposit the balance 1/3rd amount payable under the settlement. It is also observed that the balance amount was not paid within 45 days from 30 March, 2002. Therefore the learned Presiding Officer granted interest at the rate of 9% per annum from 30 March, 2002 till its realisation. The rate of interest was fixed at 9%. On failure to pay the entire amount on or before 31st July, 2003, the Petitioner- Company was directed to pay interest at the rate of 15% per annum till realisation of the amount.

11. Thus according to the learned Presiding Officer of the Labour Court, the interest was awarded as the balance amount payable as per the settlement was not paid within time provided in the settlement. There cannot be any dispute that the Court exercising powers under Section 10 of the said Act of 1947 has a power to award interest for the purposes of compensating the parties in appropriate cases. On plain reading of provisions of Section 10, 11 and 11 A of the said Act of 1947, it is impossible to accept the submission that there is no power vesting in the Court dealing with a reference to award interest. The Labour Court was seized of the references regarding reinstatement of workmen who have been dismissed from employment.

12. The first question is whether there is any illegality committed by the learned Presiding Officer of the Labour Court in awarding interest. Before the Labour Court, the grievance was regarding non payment of second instalment. The learned Counsel for the respondent Nos. 2 to 4 submitted that the parties were under obligation to record the settlement only after the payment of second instalment of 1/3rd amount. On plain reading of Sub Clause (a) of Clause 3 of the settlement it appears that the balance 1/3rd payment was payable within 45 days of disbursal of the first instalment subject to the condition that the parties recorded settlement in the pending matters. Clause No.

8 of the settlement clearly records that in consideration of the terms which are agreed, the subject matter of the cases pending before various Courts stands settled and parties will file joint pursis before the concerned Court for the disposal of the same and obtain orders from the concerned Court in terms of the same. On conjoint reading of Sub Clause (a) of Clause 3 and Clause 8 of the settlement, it can be said that the parties were under an obligation to record the settlement after the first instalment was paid. Clause 8 enjoins the parties to file joint pursis before the Court for disposal of the cases in terms of the settlement. The recording of compromise before the concerned Court/ authorities may not be a condition precedent for releasing the second instalment. However, the said clause will not entitle the workmen to say that the compromise can be recorded only after the payment of the second instalment. In fact, as narrated above, on 8th March, 2002 it was sought to be contended on behalf of the Respondent nos. 2 to 5 that there was no amicable settlement. The fact that there was an amicable settlement was admitted by respondent Nos. 2 to 5 only after application dated 12th April, 2002 was made by the Petitioner. It was specifically contended in the reply by the respondent nos. 2 to 5 that the workmen showed their willingness to withdraw cases provided they were paid remaining 1/3rd amount. On plain reading of the terms of settlement, the concerned workman ought to have come

forward for placing settlement on record of the Labour Court after the payment of the first instalment. Initially they denied that there was any settlement. When the settlement was brought to the notice of the Labour Court, they took the aforesaid stand. If this is the conduct of the Respondents 2 to 5, there was no justification for awarding interest with effect from 30th March, 2002 on the balance amount payable under the settlement. However, the fact remains that till the date on which award was made by the Labour Court, the Petitioner had neither paid nor deposited the balance amount payable to the workmen under the settlement. In my view the learned Presiding Officer could have been justified in completely denying the payment of interest provided compliance was made by the petitioner-company by paying or depositing balance 1/3rd amount alongwith applications dated 12th April 2002. Therefore no fault can be found with clause no. 2 of the operative part of the award. However rate of interest of 15% per annum awarded in the year 2003 is certainly on the higher side. Even in the cases relating to fatal accidents for payment of compensation under the Motor Vehicles Act, 1988, from the year 2003, the Apex Court has taken a consistent view that considering the falling rates of interest, in no case the interest can exceed 9% per annum. Therefore in my view the learned Presiding Officer ought to have awarded interest at the rate of 9% per annum from 16th April 2002 i.e. from the date on which the Application

was made by the Petitioner. Hence, the petition must succeed in part.

13. Accordingly I pass following order

(i) The impugned judgment and order dated 26th May, 2003 is modified and operative part thereof will be stipulated by the following.

"1) The first party is hereby directed to pay the amount to the second party workmen which is due to them as per the settlement dated 23rd October, 2000 on or before 31st July 2003."

2) If the first party fails to pay the entire amount payable to the workmen on or before 31st July, 2003, the Petitioner Company will pay the unpaid amount together with interest at the rate of 9% per annum from 16th April 2002 till the date of payment of the amount.

3. First party to pay costs of Rs.1,000/- to each second party workman.

4. Award accordingly."

(ii) Rule is partly made absolute in above terms. No order as to costs.

(iii) Time of 10 weeks is granted to comply with this order.

**( ABHAY S. OKA J.)**